

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
UNITED STATES OF AMERICA, : Docket #1:20-cr-00314-
Plaintiff, : GHW All Defendants
- against - :
MELZER, ETHAN PHELAN, : New York, New York
Defendant. : July 6, 2020
----- : REMOTE ARRAIGNMENT

PROCEEDINGS BEFORE
THE HONORABLE JUDGE SARAH NETBURN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE
BY: SAMUEL S. ADELSBERG, ESQ.
MATTHEW J. C. HELLMAN, ESQ.
One St. Andrew's Plaza
New York, New York 10007
212-637-2278
For the Defendant: FEDERAL DEFENDERS OF NEW YORK INC.
BY: JENNIFER E. WILLIS, ESQ.
JONATHAN MARVINNY, ESQ.
52 Duane Street - 10th Floor
New York, New York 10007
212-417-8743

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

Proceedings conducted telephonically and recorded by
electronic sound recording;
Transcript produced by transcription service

INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
----------------	---------------	--------------	-----------------------	----------------------

None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
---------------------------	--------------------	-----------	-----------	----------------------

None

1 PROCEEDINGS 3

2 HONORABLE SARAH NETBURN (THE COURT): Good

3 morning, everybody. This is Judge Netburn.

4 Ms. (indiscernible), are you there?

5 THE CLERK: I'm here, your Honor. Good morning.

6 THE COURT: Good morning. And do we have a court
7 reporter on the call, or you're just recording?

8 THE CLERK: We are recording.

9 THE COURT: Okay. Thank you. Can you call the
10 case?

11 THE CLERK: Your Honor, this is the matter the
12 United States v. Ethan Melzer, 20-cr-314.

13 And starting with the government, would you please
14 state your appearances for the record?

15 MR. SAMUEL S. ADELSBERG: Good morning, your
16 Honor. This is Sam Adelsberg for the United States. And
17 I'm joined by Matt Hellman.

18 THE COURT: Thank you. Good morning.

19 MS. JENNIFER WILLIS: Good morning, your Honor.
20 Jennifer Willis and Jonathan Marvinny, Federal Defenders of
21 New York, on behalf of Mr. Melzer.

22 THE COURT: Thank you. This is a reminder to
23 everybody that this is a public proceeding. Members of the
24 public and the press are able to access the proceeding
25 through the public call-in number. And all participants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

4

are reminded that any recording or rebroadcasting of any portion of this proceeding is strictly prohibited.

Can I just confirm, can the government hear me adequately?

MR. ADELSBERG: Yes, your Honor.

THE COURT: Okay. And, Ms. Willis, can you hear me okay?

MS. WILLIS: I can, your Honor.

THE COURT: Thank you. And, Mr. Melzer, I just want to confirm that you can hear me.

MR. ETHAN MELZER (THE DEFENDANT): Yes, Judge; I can hear you.

THE COURT: Okay. If for any reason you should have difficulty hearing me, please speak up and let me know, okay?

THE DEFENDANT: Yes, Judge.

THE COURT: Okay. Okay. I understand that we are here today for an arraignment, is that correct?

MR. ADELSBERG: Yes, your Honor.

THE COURT: As everyone knows, we're in the middle of the COVID-19 pandemic. I hope everybody on this call is healthy and safe. I'm conducting this proceeding remotely pursuant to the authority provided by Section 15002 of the CARES Act and the standing orders issued by our chief judge

1
2 pursuant to that act.

3 I find that the use of video conferencing at this
4 time is not reasonably available; and, therefore, it's
5 necessary to proceed by telephone. I am proceeding by
6 telephone, and I myself am outside of the district.

7 Mr. Melzer, I've already confirmed that you can
8 hear me and asked that you let me know if you have any
9 difficulty hearing me. I also want to let you know that if
10 you would like to speak privately with your attorney at any
11 time, just let me know, and we will give you that
12 opportunity, okay?

13 THE DEFENDANT: Yes, Judge.

14 THE COURT: Okay. I've received a signed
15 Waiver -- actually not signed -- of Consent to Waive
16 Physical Presence. Ms. Willis, I have this form. It has
17 your client's name typed, but it hasn't been signed. Have
18 you had an opportunity to discuss this form with him?

19 MS. WILLIS: I did, your Honor. This morning, in
20 advance of the call, I was able -- Mr. Marvinny and I were
21 both able to speak to Mr. Melzer. We did discuss with him
22 the fact that today's proceeding would be happening
23 obviously remotely and also by phone, and we did review
24 both the waivers with him. It was my understanding that
25 the Court would be able to fill it out -- not fill it

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

6

out -- rather would be able to sign on his behalf with his consent.

THE COURT: Okay. Mr. Melzer, is all of that correct?

THE DEFENDANT: Yes, Judge.

THE COURT: And do you continue to wish to waive your rights to be physically present and instead proceed by telephone?

THE DEFENDANT: Yes, Judge. Yes, Judge.

THE COURT: Okay. Thank you.

And from the government, anything further before I make my finding?

MR. ADELSBERG: No, your Honor. Thank you.

THE COURT: Thank you.

I find that at knowing and voluntary waiver of the right to be physically present for this arraignment has been made. I also find that today's proceeding cannot be further delayed without serious harm to the interests of justice. And, therefore, we will proceed by telephone.

Mr. Melzer, do you authorize me to electronically sign your name on this waiver of the right to be present at a criminal proceeding?

THE DEFENDANT: Yes, Judge.

THE COURT: Thank you. And I've also received

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

7

from you a Consent to Proceed by Video of Teleconference.
Did you receive that form, as well, or have you discussed
that form with your lawyer?

THE DEFENDANT: We discussed it, Judge.

THE COURT: Okay. And may I electronically sign
this form on your behalf, as well?

THE DEFENDANT: Yes, Judge.

THE COURT: Okay. Thank you.

As I mentioned, we are here for an arraignment.
Mr. Melzer, you've been charged in a six-count indictment.
I'm going to go over those counts briefly with you.
Count 1 charges you with conspiracy to murder U.S.
nationals. That's a violation of Title 18 of the United
States Code Section 2332(b) and 3238. Count 2 charges you
with attempted murder of U.S. nationals. That's a
violation of Title 18 of the United States Code Sections
2332(b), 3238, and 2. Count 3 charges you with conspiracy
to murder U.S. service members. That's a violation of
Title 18 of the United States Code Section 1114, 1117, and
3238. Count 4 charges you with attempted murder of U.S.
service members. That's as violation of Title 18 of the
United States Code Sections 1114, 3238, and 2. Count 5
charges you with the provision and attempted provision of
material support to terrorists. That's a violation of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

8

Title 18 of the United States Code Section 2339-A(a), 3238, and 2. And Count 6 charges you with conspiracy to murder and maim in a foreign country. And that is a violation of Title 18 of the United States Code, Sections 956(a)(1), 956(a)(2)(A), and 3238.

Mr. Melzer, have you received a copy of this indictment?

THE DEFENDANT: Yes, Judge.

THE COURT: And have you had an opportunity to discuss the charges with your lawyer?

THE DEFENDANT: Yes, Judge.

THE COURT: I've gone over the six counts of the indictment, but if you'd like, I can read the entire indictment to you in open court. Would you like me to read it to you?

THE DEFENDANT: No, thank you, Judge.

THE COURT: And how do you plead to the charges?

THE DEFENDANT: Not guilty, Judge.

THE COURT: Thank you. I'll enter a plea of not guilty on your behalf.

Anything further from the government?

MR. ADELSBERG: No, your Honor.

THE COURT: And, Ms. Willis, anything further from defense?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

9

MS. WILLIS: No, your Honor. Thank you.

THE COURT: Okay. Thank you, everybody. We're
adjourned.

MR. ADELSBERG: Thank you, Judge.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of USA v. Ethan P. Melzer, Docket #20-cr-00314-GHW All Defendants, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: July 7, 2020